

AGENDA

Finance Commission of Texas

AUDIT COMMITTEE MEETING

Friday, April 20, 2012
9:00 a.m. or Upon Adjournment of the
Study Committee Meeting, Whichever is Later

Hearing Room E2.028, Texas Capitol Extension
Austin, Texas 78701

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

- A. Review and Approval of Minutes of the February 16, 2012, Audit Committee Meeting.
- B. Audit Committee Review of Agencies' Activities.
- C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 29, 2012, Investment Officer Reports.
 - 1. Office of Consumer Credit Commissioner
 - 2. Texas Department of Banking
 - 3. Texas Department of Savings and Mortgage Lending
- D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Second Quarter Financial Statements.
 - 1. Office of Consumer Credit Commissioner
 - 2. Texas Department of Banking
 - 3. Texas Department of Savings and Mortgage Lending
- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's Follow-up Audit Report as Prepared by the State Auditor's Office.
- F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Audit of the Department of Banking's Prepaid Funeral Guaranty Funds.

NOTE: The Audit Committee may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission will accommodate special needs. Those requesting auxiliary aids or services should notify Tammy King Wooten, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

MINUTES OF THE

Finance Commission Audit Committee Meeting

Thursday, February 16, 2012

The Audit Committee of the Finance Commission of Texas met Thursday, February 16, 2012, in Hearing Room E2.028, Texas Capitol Extension, 1100 N. Congress Avenue, Austin, Texas.

Members in attendance:

Cindy Lyons, Audit Committee Chair
Lori McCool, Audit Committee Member
Bill White, Audit Committee Member and Chair, Finance Commission

Others in attendance:

Susan Burton, Finance Commission Member
Darby Byrd, Finance Commission Member
Victor Leal, Finance Commission Member
Stacy London, Finance Commission Member
Jonathan Newton, Finance Commission Member
Larry Patton, Finance Commission Member
Paul Plunket, Finance Commission Member
Jay Shands, Finance Commission Member
Doug Foster, Executive Director to the Finance Commission and Commissioner, Texas Department of Savings and Mortgage Lending (SML)
Charles Cooper, Commissioner, Texas Department of Banking (DOB)
Leslie Pettijohn, Commissioner, Office of Consumer Credit Commissioner (OCCC)
Stephanie Newberg, Deputy Commissioner, Texas Department of Banking (DOB)
Bob Bacon, Deputy Commissioner, Texas Department of Banking (DOB)
Antonia Antov, Director of Administration and Finance, Texas Department of Savings and Mortgage Lending (SML)
Jim Crowson, Assistant Attorney General, Office of the Attorney General

Audit Committee Member and Finance Commission Chair Bill White announced that Committee Chair Cindy Lyons was in transit to the meeting. He announced a quorum was present, with two Committee Members (Ms. McCool and Mr. White) present and called the meeting to order at 2:32 p.m.

A. Audit Committee Review of Agencies' Activities.

Texas Department of Banking

Deputy Commissioner Newberg presented the outstanding audit findings of the banking examination from the State Auditor's Office. Chairman White commented on the current reports regarding staffing issues. Deputy Commissioner Bacon responded to staffing questions explaining the process of allocating staff doing onsite examinations, report preparation, and the coordination with other federal agencies.

Texas Department of Savings and Mortgage Lending

Commissioner Foster reported that there were no outstanding audit issues for SML.

Office of Consumer Credit Commissioner

Commissioner Pettijohn announced that the State Auditor's Office (SAO) was conducting a follow up audit to assess the status of implementation of prior audit findings, namely from the 2008 SAO audit. She gave an overview of the outstanding audit findings and the implementation of items from the previous Garza/Gonzalez & Associates audit.

- B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' November 30, 2011, Investment Officer Reports.

Texas Department of Banking

Deputy Commissioner Newberg gave an overview of the Trust Funded Prepaid Funeral Guaranty Fund Quarterly Investment Report. She commented on the completion items from Garza/Gonzalez & Associates and reported there were no audit findings.

Texas Department of Savings and Mortgage Lending

Director Antonia Antov presented an overview of the Investment Officer Report detailing the agency's certificate of deposit information.

Office of Consumer Credit Commissioner

Commissioner Pettijohn provided an overview of the Residential Mortgage Loan Originator Recovery Trust Fund, while highlighting the new Financial Education Endowment Fund. There was discussion among Commission Members in reference to the Endowment Fund process and guidelines. Commission Member Plunket and Chairman White commented on finding effective education programs to study for best practices.

Lori McCool made a motion to recommend that the Finance Commission accept the Agencies' November 30, 2011, Investment Officer Report. Susan Burton seconded and the motion was adopted.

- C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' First Quarter Financial Statements.

Texas Department of Banking

Deputy Commissioner Newberg gave an overview of the agency's First Quarter Financial Statements. She highlighted the department's total revenues and budgeted expenditures. Chairman White inquired about personnel and staffing with Deputy Commissioner's Newberg and Bacon addressing his questions.

Committee Chair Lyons arrived and assumed responsibility as Chair of the Audit Committee.

Texas Department of Savings and Mortgage Lending

Director Antov presented the First Quarter Financial Statements for SML and gave an overview of the agency's Operating Statement and Budget Analysis. She highlighted the total revenues and expenditures detailing licensing fees, which are currently 12% above budget.

Committee Chair Lyons commented on the total expenditures with Director Antov explaining the agency's excess cash amounts.

Office of Consumer Credit Commissioner

Commissioner Pettijohn presented an overview of the Operating Statement and Budget Analysis. She detailed the variances while explaining the agency's revenues and expenditures.

Darby Byrd made a motion to recommend that the Finance Commission accept the Agencies' First Quarter Financial Statements. Lori McCool seconded and the motion was adopted.

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Investment Policies.

Texas Department of Banking

Deputy Commissioner Newberg provided an overview of the agencies' Investment Policies. She referenced HB 2226, which updated the Public Funds Investment Act. She highlighted the new additional language regarding the types of authorized investments.

Commission Member Plunket commented on the additional wording of the bill with Deputy Commissioner Newberg agreeing to requested revisions and changes.

Texas Department of Savings and Mortgage Lending

Director Antov presented changes to the agency's Investment Policy. She addressed policy requirements and questions from Committee Chair Lyons.

Office of Consumer Credit Commissioner

Commissioner Pettijohn gave an overview of the agency's Investment Policy. She noted a change and correction to the wording in the Investment Officer section.

Lori McCool made a motion to recommend that the Finance Commission accept the Agencies' Investment Policies. Darby Byrd seconded and the motion was adopted.

There being no further business, Committee Chair Cindy Lyons adjourned the meeting of the Audit Committee of the Finance Commission on Thursday, February 16, 2012, at 3:07 p.m.

Cindy Lyons, Chair of the Audit Committee
Finance Commission of Texas

Doug Foster, Executive Director of the
Finance Commission of Texas

Tammy King Wooten, Executive Assistant
Finance Commission of Texas

Office of Consumer Credit Commissioner
Outstanding Audit Findings Report as of 03/31/2012

Auditor	Garza / Gonzalez & Associates	Audit Report Date
Audit Area	Business Licensing	Aug-11
Finding	Status Update	
<p>In Progress. The agency, for better clarification, will amend each of the rules relating to fees to include the wording "not to exceed". These amendments will be done during the regular rule review process of each regulated area. The motor vehicle sales finance and property tax lenders are scheduled for rule review in 2012. The pawnshops and regulated lenders are not scheduled until 2014 for rule review; however, where feasible the agency will amend these rules earlier.</p>		
Auditor	Garza / Gonzalez & Associates	Audit Report Date
Audit Area	Business Licensing	Aug-11
Finding	Status Update	
<p>Compare the application "Action Form" to the applicable TAC and revise, as considered necessary, to ensure any needed license application requirements are listed on the form.</p> <p>Substantially Implemented. The agency is reviewing the action forms and comparing them to the applicable TACs. The agency completed the reviews and revisions prior to December 31, 2011. Final review anticipated to be completed by April 30, 2012.</p>		

Texas Department of Banking
Outstanding Audit Findings Report as of April 2012

Auditor	State Auditor	Audit Report Date
Audit Area	Bank Examinations	June 2009
Finding	Status Update	
Improve timeliness of examination report processing	<p>Substantially Implemented – For the fiscal year ending August 2011 and the two quarters of fiscal year 2012, 46% and 65%, respectively, of the examination reports were mailed within policy guidelines. However, when joint examinations conducted with the federal regulators are excluded, the percentage mailed within policy guidelines in the two quarters of fiscal year 2012 increases to 73%. The average number of days late for all commercial examinations was 14 in the two quarters of fiscal year 2012, which is an improvement over the 17 days recorded for fiscal year 2011.</p>	
Conduct bank examinations in a timely manner	<p>Substantially Implemented – As noted in the SAO audit, the Department was then operating with 32 fewer commissioned examiners than the agency's staffing plan required, which made correction of this audit finding challenging. A lack of experienced examiners lowers the production efficiency levels, and inexperienced staff requires more training. Since the SAO audit, the Department has slightly reduced the deficit of commissioned examiners compared to the staffing plan. For the fiscal year ending August 2011 and the two quarters of fiscal year 2012, 53% and 47%, respectively, of the examinations were conducted within policy guidelines. The average days late to begin an examination in the two quarters of fiscal year 2012 were 28 days, compared to 37 days for fiscal year 2011.</p>	
Contact banks within the first half of the examination cycle	<p>Substantially Implemented – The Banker Call Program is not designed to identify risk, but to encourage a free exchange of information between the Department and bankers outside the normal examination process. For the two quarters of fiscal year 2012, all contacts were made, but some fell outside of the agency's policy guidance. In all, 91% of the required banker contacts were made within the timeframe of the policy guidelines.</p>	
Ensure that regional directors consistently submit OMRs by the required due date.	<p>Implemented – The Department has emphasized with our Regional Directors the importance of submitting these reports by the required due date. For the two quarters of fiscal year 2012, all Offsite Monitoring Reports were submitted on time.</p>	

**Texas Department of Savings and Mortgage Lending
Outstanding Audit Issues Report as of 3/31/2012**

No Outstanding Audit Issues

Office of Consumer Credit Commissioner
Residential Mortgage Loan Originator Recovery Trust Fund #3008
Fiscal Year 2012 - 2nd Quarter

Beginning Balance	Additions	Interest Paid	Paid Claims	Paid Bank Fees	Ending Balance	Current Interest Rate
\$ 53,423.56	\$ 16,350.00	\$ 7.15	\$ -	\$ -	\$ 69,780.71	.10%

Investment Officer: Christina Cuello Date: 4/5/12

Reviewed By: [Signature] Date: 4.5.12

Note: These funds are held at the Texas Treasury Safekeeping Trust Company in overnight repurchase agreement
The above investments are in compliance with the agency's investment policy.

Texas Financial Education Endowment Fund #3071
Fiscal Year 2012 - 2nd Quarter

Beginning Balance	Additions	Interest Paid	Paid Claims	Paid Bank Fees	Ending Balance	Current Interest Rate
\$ -	\$ 659,600.00	\$ 64.88	\$ -	\$ -	\$ 659,664.88	.10%

Investment Officer: Christina Cuellar Date: 4/5/12

Reviewed By: [Signature] Date: 4.6.12

Note: These funds are held at the Texas Treasury Safekeeping Trust Company in overnight repurchase agreements.
The above investments are in compliance with the agency's investment policy.

Insurance-Funded Prepaid Funeral Guaranty Fund Quarterly Investment Report
 December 1, 2011 to February 29, 2012

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Book Value at 11/30/2011	Interest Income Received	Trustee Fees Paid	(2) Other Deductions	(1) Other Additions	Book/Market Value at February 29, 2012	Maturity Date	Interest Rate
\$68,248.84	\$8.96			\$27,779.00	\$96,036.80	1-Mar-2012	0.10%

(1) Other additions include assessments collected from permit holders on new insurance-funded contracts.

Note: These funds are held at the Texas Treasury Safekeeping Trust Company in overnight repurchase agreements.
 The above investments are in compliance with the investment strategies of Administrative Memorandum 2016.

Prepared By: James Smith Date: 3/22/12

Reviewed By: J. Newberry Date: 3/22/12

Trust Funded Prepaid Funeral Guaranty Fund Quarterly Investment Report
December 1, 2011 to February 29, 2012

Book Value at 11/30/2011	Interest Income Received	(1)		Trustee Fees Paid	(2)		Book/Market Value at February 29, 2012	Maturity Date	Interest Rate	Accrued Interest on CDs
		Other Deductions	Other Additions							
\$1,687,458.89	\$7,140.51	\$47.18	\$13,225.00	\$12,207.02			\$1,693,534.24	--	--	\$1,183.34
<u>Trust Account Balances at Trustee/Depositories</u>										
Texas Treasury Safekeeping Trust Company *										
First Bank and Trust of Childress (CD)										
First State Bank of Yoakum (CD)										
Citizens State Bank, Buffalo, TX (CD)										
Pilgrim Bank (money market)										
							\$696,383.63	3/1/2012	0.10%	
							\$250,000.00	6/14/2012	0.70%	\$68.06
							\$250,000.00	12/17/2012	1.10%	\$565.28
							\$250,000.00	6/24/2012	1.20%	\$550.00
							<u>\$247,150.61</u>	n/a	0.72%	
							\$1,693,534.24			
							Subtotal			

(1) Other deductions include: (a) \$7,451.20 paid to various consumers related to Howell-Doran Funeral Home; (b) \$2,658.80 paid to consumer related to restitution paid by Mr. Pipkins and (c) \$3,115.00 related to an illegal contract sold by Walker-Mora Funeral Home, Inc.

(2) Other additions include: (a) \$2,998.22 in payments from consumers related to PFCs purchased from Howell-Doran; (b) \$2,250.00 restitution received from Mr. Wayne Brown; (c) \$200.00 restitution received from Mr. Dan L. Brothers; (d) \$558.80 restitution received from Mr. William A. Pipkins; (e) \$200.00 restitution received from DJ Turner; and (f) \$6,000.00 restitution received from Lonnie Wright related to the sale of an illegal prepaid funeral contract.

Note: * These funds are held at the Texas Treasury Safekeeping Trust Company in overnight repurchase agreements.
The above investments are in compliance with the investment strategies of Administrative Memorandum 2016.

Prepared By: [Signature] Date: 3/22/12

Reviewed By: [Signature] Date: 3/22/12

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Seized Prepaid Funeral Funds

	Book Value at 11/30/2011	Interest Income Received	Trustee Fees Paid	Other Deductions	Other Additions	Book Value at February 29, 2012
1. Howell-Doran Funeral Home, Inc. PFC 272	\$388,925.36			\$7,451.20	\$2,998.22	\$384,472.38
Total Seized Funds	\$388,925.36	\$0.00	\$0.00	\$7,451.20	\$2,998.22	\$384,472.38

Notes:

1. The records and funds related to Permit Number 272 were seized as a result of management failing to deposit preneed funds as required. Emergency Order Number 2011-026 issued on June 28, 2011 ordered the immediate seizure of the funds and records. Subsequent to the seizure, the Department has received documents from various consumers evidencing the sale of illegal contracts. The Department has presented the file to the San Saba District Attorney's Office for review and possible prosecution.

The amount under "Other Additions" represents payments made by consumers. The amount under "Other Deductions" represent withdrawals related to cancelled and matured contracts.

The above investments are in compliance with the investment strategies of Administrative Memorandum 2027.

Prepared By:  Date: 3/22/12

Reviewed By:  Date: 3/22/12

Department of Banking Quarterly Investment Report
December 1, 2011 to February 29, 2012

	<u>Book Value at February 29, 2012</u>	<u>Trustee</u>	<u>Investment Type</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
Seized Prepaid Funeral Funds					
1. Howell-Doran Funeral Home, Inc. PFC 272	\$384,472.38	Texas Treasury Safekeeping, Austin, TX	trust	3/1/2012	0.10%
Total Seized Funds	<u>\$384,472.38</u>				

Texas Department of Savings and Mortgage Lending
Mortgage Broker Recovery Trust Fund # 1831 (formerly 0848)

Investment Officer Report as of February 29, 2012

Current Investments/Securities as of February 29, 2012							
Purchase Date	Beginning Market Value	Ending Market Value	Accrued Interest - Estimated	Interest Rate	Maturity Date	Description	Fin. Institution
1/31/2011	240,000.00	242,642.41	222.42	1.10%	7/31/2012	CD - 18 months	I-Bank Texas SSB
1/31/2011	240,000.00	242,892.98	234.80	1.20%	1/31/2013	CD - 24 months	Horizon Bank SSB
4/7/2011	240,000.00	242,167.30	434.08	1.20%	4/7/2013	CD - 24 months	Triumph SSB
4/14/2011	240,000.00	242,085.47	355.73	1.15%	4/14/2012	CD - 12 months	Lone Star Bank SSB
4/15/2011	240,000.00	242,176.11	363.26	1.20%	10/15/2012	CD - 18 months	Texas Star Bank
6/10/2011	240,000.00	242,183.44	172.56	1.35%	12/10/2012	CD - 18 months	Spirit of Texas SSB
6/14/2011	240,000.00	241,972.60	604.93	1.50%	6/14/2013	CD - 24 months	Pioneer Bank SSB
8/29/2011	240,000.00	240,000.00	1,042.67	0.85%	8/28/2013	CD - 24 months	Libertad SSB
10/15/2011	240,903.32	240,903.32	1,145.96	1.25%	10/15/2011	CD - 24 months	First Star Bank SSB
12/15/2011	240,000.00	240,000.00	658.67	1.30%	12/15/2013	CD - 24 months	Oasis Bank, SSB
12/15/2011	240,000.00	240,253.15	253.60	0.50%	6/15/2012	CD - 6 months	TrustTexas Bank SSB
2/4/2012	243,000.00	243,000.00	202.50	1.20%	2/4/2014	CD - 24 months	Third Coast Bank SSB
Totals	2,883,903.32	2,900,276.78	5,691.18				


Texas Department of Savings and Mortgage Lending

Mortgage Broker Recovery Trust Fund # 1831 (formerly 0848)

Investment Officer Report as of February 29, 2012 (continued)

Fund Position for the Quarter Ended February 29, 2012		
Beginning Cash Balance as of November 30, 2011	\$	912,940.61
Receipts		
Licenses' Remittances	12,634.00	
CDs Principal and Interest - Maturity	481,922.73	
Interest from overnight repos*	761.20	
Total Received	\$	495,317.93
Disbursements		
CDs Principal - Purchase	(720,903.32)	
Payments of Claims	(1,300.00)	
Transfer of excess to Operating Fund	-	
Bank Fees and Charges	-	
Total Disbursed	\$	(722,203.32)
Total Cash Balance in Trust and Treasury		686,055.22
Reserve		
Reserved for Potential Payment of Claims w/in 90 days	\$	(57,390.00)
Available Cash Balance as of February 29, 2012	\$	628,665.22
Total Amount of Investments		2,900,276.78
Fund Balance as of February 29, 2012	\$	3,586,332.00

Claim Payment History		
Fiscal Year	Total Amount \$	# of Payments
2000-2004	46,243.68	2
2005	0	0
2006	75,000.00	3
2007	87,824.08	4
2008	25,488.14	3
2009	100,000.00	10
2010	147,033.52	16
2011	22,225.00	5
2012	1,300.00	1
Totals	505,114.42	44


4/5/12
 Antonia Antov, Investment Officer Date

Investment Position: The Fund is capable of meeting all known obligations.
 Investment Compliance: The Department's Investment Policy has been followed.

OFFICE OF CONSUMER CREDIT COMMISSIONER
OPERATING STATEMENT & BUDGET ANALYSIS
For the Period Ended February 29, 2012

	FY	FY	FY 2012 PERFORMANCE			50.00%
	2011 ACTUAL	2012 BUDGET	YTD BUDGET	YTD ACTUAL	(OVER)/UND BUDGET	PERCENT BUDGET
REVENUES:						
Regulated Lenders	\$1,494,881	\$996,822	\$933,922	\$1,482,774	(\$548,852)	148.8% (1)
Pawn Industry	1,030,472	595,211	\$74,889	61,250	13,639	10.3%
MV Industry	2,728,021	2,182,441	\$232,746	345,309	(112,562)	15.8% (2)
Credit Access Industry	-	2,400,000	\$2,131,200	1,965,310	165,890	81.9%
Penalties	912,245	-	-	502,575	(502,575)	100.0%
Debt Management Services	31,350	28,300	\$25,357	40,040	(14,682)	141.5% (3)
RAL Assessment	235,525	172,500	\$168,243	118,450	49,793	68.7% (4)
Precious Metals	-	194,850	\$113,598	89,700	23,898	46.0%
Tax Liens	44,444	58,000	\$50,787	58,086	(7,298)	100.1%
Sale of Publications	7,419	-	-	1,861	(1,861)	100.0%
Creditor Registration	84,465	79,350	\$74,183	71,895	2,288	90.6%
Mortgage Loan Originators	354,250	135,600	\$113,756	216,325	(102,569)	159.5% (5)
Other Revenue	3,679	-	-	1,368	(1,368)	100.0%
Investment / Interest Income	8,039	-	-	2,344	(2,344)	100.0%
TOTAL REVENUES	\$6,934,792	\$6,843,074	\$3,918,681	\$4,957,286	(\$1,038,605)	72.4%
EXPENDITURES:						
Salaries and Wages-						
Base Pay	\$2,694,397	\$3,845,022	\$1,922,511	\$1,545,384	\$377,127	40.2%
Benefit Replacement Pay	12,566	11,296	5,648	10,758	(5,110)	95.2%
Longevity	55,380	58,100	29,050	27,960	1,090	48.1%
	\$2,762,343	\$3,914,418	\$1,957,209	\$1,584,102	\$373,107	40.5% (6)
Travel-						
Public Transportation, Lodging, Meals & Mileage	592,319	720,000	360,000	252,056	107,944	35.0%
	\$592,319	\$720,000	\$360,000	\$252,056	\$107,944	35.0% (7)
Other Expenditures-						
Other Fees / Crim History & Fingerprints	\$128,899	\$ -	\$ -	\$ -	\$ -	100.0%
Professional Services & Fees	84,364	223,000	111,500	132,338	(20,838)	59.3%
Consumable Supplies	20,494	32,500	16,250	6,717	9,533	20.7% (8)
Postage & Freight	34,330	47,500	23,750	22,042	1,708	48.4%
Telephone & Communications	48,347	65,500	32,750	25,466	7,284	38.9%
Bldg. & Utilities	33,547	70,000	35,000	(74,643)	109,643	-106.6% (9)
Rent-Machine/Other	6,804	1,500	750	-	750	0.0%
Publication / Printing & Reproduction	5,731	20,000	10,000	6,989	3,011	34.9%
Other Operating	76,254	198,599	99,300	49,832	49,468	25.1% (10)
	\$438,770	\$658,599	\$329,300	\$168,740	\$160,559	25.6%
Acquisition of Info Technology	\$76,337	\$413,000	\$206,500	\$23,380	\$183,120	5.7% (11)
Employee Benefits	791,865	1,090,557	545,279	452,839	92,439	41.5%
SWCAP Reimb to Unapp Gr 0001	36,676	40,000	20,000	27,455	(7,455)	68.6%
SORM Assessment	5,402	6,500	3,250	4,523	(1,273)	69.6%
Unemployment Benefits	-	-	-	-	-	0.0%
	\$910,280	\$1,550,057	\$775,029	\$508,197	\$266,831	32.8%
TOTAL EXPENDITURES	\$4,703,713	\$6,843,074	\$3,421,537	\$2,513,096	\$908,441	36.7%
EXCESS REVENUES	\$ 2,231,079	\$ -	\$ 497,144	\$ 2,444,191	\$ (1,947,046)	

Office of Consumer Credit Commissioner

Overview of Budget Variances for 2nd qtr. FY 2012

Revenues

- 1.) Regulated Lender Revenue is above budget due to an increased rate above the projection renewal and retention of regulated lenders.
- 2.) Motor Vehicle is above budget due to an increase in the number of applications received in the first quarter.
- 3.) Debt Management is above budget due to an increase in the number of applications received beyond the expected level.
- 4.) The renewal rate is below projected level. This is due in large part to changes in the RAL availability as a result of the amendments to the tax refund process by the IRS.
- 5.) Mortgage Loan Originators is above budget due to the renewal cycle yielding a higher percentage of retained and renewed lender originators than anticipated.

Expenditures

- 6.) Personnel costs are below budget due to vacant positions that were added to our FTE count/budget and the staged hiring and employment of the FTE's. Additionally the agency has begun to experience increased turnover.
- 7.) Travel is below budget due to CAB timing differences with the expectation that exam activity begins in the 3rd quarter, which will cause the overall expense to increase disproportionately in the 3rd and 4th quarter.
- 8.) The consumables and publication are below budget due to lower levels of procurement purchases.
- 9.) Building and utilities has a negative balance due to the cancellation and reimbursement of the boiler contract.
- 10.) The other operating expenses are below budget due to low levels of procurement purchases.
- 11.) The acquisition of technology is below budget due to a \$250,000 reserve being set aside for the long term IT project. Other procurement will increase in the 3rd and 4th quarters.
- 12.) For the 2nd quarter ending February 29, 2012, the total fund balance is \$5,933,654. A total of \$750,000 is reserved for IT project, leaving an unrestricted/unassigned balance of \$5,183,654. This fund balance represents the receipt of application fees for initial CAB applications, as well as Crafted Precious Metals registrations. This large influx of revenue represents the initial implementation of these programs and the high point in the agency's cash flow cycle. The fund balance should decline through the remainder of the revenue and expenditure cycle. The average FY 12 projected monthly expenditures is \$570,256, with the number of months for expenditures equaling 9.09.

**Texas Department of Banking
Operating Statement and Budget Analysis
For Period Ending February 2012**

	FY		QUARTER PERFORMANCE				FY2012 PERFORMANCE			
	2011 ACTUAL	2012 BUDGET	2nd Quarter BUDGET	2nd Quarter ACTUAL	(OVER/UNDER BUDGET)	PERCENT BUDGET	YTD BUDGET	YTD ACTUAL	(OVER/UNDER BUDGET)	PERCENT BUDGET
REVENUE:										
Bank & Trust Regulation	\$19,612,579.02	\$20,967,185.42	\$5,387,881.64	\$5,370,582.82	\$17,298.82	99.7%	\$10,717,485.27	\$10,736,583.88	(\$19,098.61)	100.2%
Nonbank Regulation	2,462,756.55	2,619,767.70	46,621.00	59,384.82	(12,763.82)	127.4%	1,557,310.20	1,575,276.68	(17,966.48)	101.2%
Miscellaneous Revenues	52,367.36	31,140.00	7,737.00	9,111.51	(1,374.51)	117.8%	15,922.00	15,844.42	77.58	99.5%
TOTAL REVENUES:	\$22,127,702.93	\$23,618,093.12	\$5,442,239.64	\$5,439,079.15	\$3,160.49	99.9%	\$12,290,717.47	\$12,327,704.98	(\$36,987.51)	100.3%
EXPENDITURES:										
Salaries and Wages										
Exempt Salaries	\$180,000.00	\$203,100.00	\$51,300.00	\$51,300.00	\$0.00	100.0%	\$100,500.00	\$100,500.00	\$0.00	0.0%
Classified Salaries	13,750,166.43	15,032,423.87	3,718,366.06	3,509,897.45	208,468.61	94.4%	7,442,411.73	7,030,442.08	411,969.65	94.5%
Longevity	200,180.00	208,200.00	51,480.00	50,420.00	1,060.00	97.9%	102,100.00	100,740.00	1,360.00	98.7%
Other	178,930.11	212,857.37	56,726.48	56,791.78	(65.30)	100.1%	82,970.63	89,980.72	(7,010.09)	108.4%
Payroll Health Insurance Cont	0.00	153,695.89	37,896.66	33,792.74	4,103.92	89.2%	75,874.12	68,262.87	7,611.25	90.0%
Travel										
In-State	\$14,309,276.54	\$15,810,277.13	\$3,915,769.20	\$3,702,201.97	\$213,567.23	94.5%	\$7,803,856.48	\$7,389,925.67	\$413,930.81	94.7%
Out-of-State	\$1,362,311.03	\$1,490,775.60	\$312,448.96	\$304,806.23	\$7,642.73	97.6%	\$644,346.66	\$601,860.78	\$42,485.88	93.4%
	430,260.54	551,330.00	62,393.00	66,636.87	(4,243.87)	106.8%	193,698.00	189,929.07	3,768.93	98.1%
Other Expenditures										
Professional Fees & Services	\$1,792,571.57	\$2,042,105.60	\$374,841.96	\$371,443.10	\$3,398.86	99.1%	\$838,044.66	\$791,789.85	\$46,254.81	94.5%
Postage	\$59,250.98	\$119,614.00	\$13,743.50	\$13,701.06	\$42.44	99.7%	\$23,247.00	\$19,774.90	\$3,472.10	85.1%
Consumable Supplies	13,822.55	15,456.00	1,371.00	1,149.52	221.48	83.8%	2,816.00	1,979.12	836.88	70.3%
Telephone	83,161.26	99,272.00	16,061.00	10,530.70	5,530.30	65.6%	39,205.00	35,213.67	3,991.33	89.8%
Utilities	174,435.65	226,443.00	71,367.00	68,938.33	2,428.67	96.6%	109,762.00	100,394.05	9,367.95	91.5%
Rent - Buildings	38,651.22	40,511.00	4,893.00	6,397.46	(1,494.46)	130.5%	22,113.00	22,813.14	(700.14)	103.2%
Rent - Machinery & Other	213,960.32	211,475.04	50,243.01	50,773.49	(530.48)	101.1%	117,801.36	119,466.08	(1,664.72)	101.4%
Other Operating	37,117.74	34,713.88	8,168.47	8,119.44	49.03	99.4%	16,356.94	16,238.88	118.06	99.3%
Subscriptions	258,339.38	370,287.00	33,377.00	15,925.55	17,451.45	47.7%	176,175.00	119,462.31	56,712.69	67.8%
Employee Training / Reg. Fees	16,236.38	21,460.00	3,715.00	1,847.08	1,867.92	49.7%	9,820.00	7,123.07	2,696.93	72.5%
Temporary Support Services	113,748.87	155,431.50	15,471.30	(28,261.19)	43,732.49	-182.7%	47,361.80	4,571.89	42,789.91	9.7%
Claims & Judgments	0.00	0.00	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%
Capital Expenditures	16,184.32	16,604.00	0.00	2,477.36	(2,477.36)	0.0%	13,604.00	15,455.76	(1,851.76)	113.6%
	164,120.69	115,050.00	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%
Employee Benefits (Less BRP)										
SWCAP	\$1,189,028.36	\$1,426,317.42	\$218,410.28	\$151,588.40	\$66,821.88	69.4%	\$578,262.10	\$482,492.87	\$115,769.23	80.0%
Return of Funds	\$3,319,832.94	\$3,641,720.80	\$901,993.15	\$825,947.63	\$76,045.52	91.6%	\$1,797,528.69	\$1,604,805.11	\$192,723.58	89.3%
State Auditors Office	0.00	50,000.00	50,000.00	49,121.00	879.00	98.2%	50,000.00	49,121.00	879.00	98.2%
Attorney General's Office	6,656.00	50,000.00	0.00	(174,333.12)	174,333.12	0.0%	0.00	(174,333.12)	174,333.12	0.0%
Safekeeping Trust	0.00	50,000.00	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%
	27,377.84	48,000.00	12,000.00	2,413.56	9,586.44	20.1%	24,000.00	5,533.23	18,466.77	23.1%
TOTAL EXPENDITURES:	\$20,844,743.25	\$23,118,420.95	\$5,473,014.59	\$4,928,382.54	\$544,632.05	90.0%	\$11,091,691.93	\$10,129,334.61	\$962,357.32	91.3%
EXPENDITURES (OVER) / UNDER REVENUE:	\$1,482,959.68	\$499,672.17	(\$30,774.95)	\$510,696.61	(\$541,471.56)		\$1,199,025.54	\$2,198,370.37	(\$999,344.83)	

Texas Department of Banking

Overview of Budget Variances for the Second Quarter of Fiscal 2012

Nonbank Regulation – The positive variance is due to the collection of unexpected examination fees and penalties.

Miscellaneous Revenue – The positive variance results from the Comptroller now allowing us to keep four months of salaries in interest bearing accounts.

Classified Salaries and Employee Benefits – The positive variance relates to vacant positions that were not filled. Our vacancies in terms of FTEs at February 29 are listed below.

Administrative Staff	1.5
Limited Term Examiners	2*
Examiners	15*

** Our original budget projections for fiscal 2012 had limited term new hires at FE V Credit Analyst salaries and all other new hires at FE I. However, we have been able to hire more experienced and tenured financial examiners at the FE VI and FE VII levels which has strengthened our staffing plan but used more of the salary budget. The current budget level for salaries prevents us from hiring six of these positions.

Payroll Health Insurance – The positive variance relates to the vacant staff positions. Further, the calculation is not exactly as we understood when the budget was prepared. Certain salaries are excluded from the calculation.

Consumable Supplies – The positive variance is due to supply purchases being less than anticipated.

Other Operating – The positive variance is due to the decision not to purchase a new conference table for Houston and the allocation of fees for the Finance Commission executive assistant and executive director being less than budgeted.

Employee Training – The positive variance is due to tuition credit reimbursements from the Federal Reserve Bank and employee vacancies.

Return of Funds – The credit balance is the result of reimbursements from the Facilities Commission for the cancellation of the elevator and boiler projects.

Attorney General – The positive variance is a result of the Attorney General usage being less than anticipated.

Cash Position – At February 29, 2012, the agency's cash balance was approximately \$7.03 million. \$415,000 of this balance is reserved for lump sum vacation benefits due the employees that are eligible to retire at August 31, 2011 or have already retired and are return to work employees. The remaining balance is the expenditure reserve of approximately 3.6 months of budgeted 2012 expenditures.

TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

OPERATING STATEMENT AND BUDGET ANALYSIS

For the Period Ended February 29, 2012

	FY 2011 EXPENDED	FY 2012 BUDGET	FY 2012 PERFORMANCE			
			YTD BUDGET	YTD EXPENDED*	(OVER)/UNDER BUDGET	PERCENT BUDGET
REVENUE:						
Annual Assessment	1,500,571	1,449,457	725,455	726,855	(\$1,400)	100.2%
Thrift Application Fees	58,500	20,000	10,000	16,500	(6,500)	165.0%
Special Exams and Visitations	31,200	10,000	0	0	0	0.0%
Licensing Fees	4,919,120	3,264,800	3,085,050	3,788,037	(702,987)	122.8%
Fines and Penalties	124,822	75,000	37,500	273,738	(236,238)	730.0%
Depository Interest	10,884	6,000	3,000	3,906	(906)	130.2%
Miscellaneous	10,610	3,000	3,000	3,007	(7)	100.2%
Recovery Fund Offset	81,072	0	0	0	0	0.0%
TOTAL REVENUE	6,736,779	4,828,257	3,864,005	4,812,043	(948,038)	124.5%
EXPENDITURES:						
Salaries and Wages-						
Exempt	155,000	177,234	87,502	88,542	(1,040)	101.2%
Classified	3,056,194	3,410,010	1,693,597	1,625,101	68,496	96.0%
Other Personnel Costs	66,509	52,700	27,380	32,475	(5,095)	118.6%
	3,277,703	3,639,944	1,808,479	1,746,118	62,361	96.6%
Travel-						
Transportation & Mileage	396,202	424,500	200,025	199,701	324	99.8%
	396,202	424,500	200,025	199,701	324	99.8%
Other Expenditures-						
Professional Services/Fees	23,412	21,950	11,920	15,568	(3,648)	130.6%
Consumable Supplies	27,281	21,000	10,500	7,248	3,252	69.0%
Utilities	20,399	21,300	10,650	10,234	416	96.1%
Rent-Space & Equipment	4,328	3,600	2,250	2,713	(463)	120.6%
Other Operating Expenses	275,003	226,535	119,505	119,285	220	99.8%
	350,423	294,385	154,825	155,048	(223)	100.1%
Other Agency Costs						
Employee Benefits	878,087	972,000	486,000	452,856	33,144	93.2%
SWCAP Indirect Costs	24,490	26,040	13,020	10,673	2,347	82.0%
Interagency Contracts	6,826	63,600	6,800	803	5,997	11.8%
Building: Deferred Maintenance	0	25,000	0	(92,039)	92,039	0.0%
	909,403	1,086,640	505,820	372,293	133,527	73.6%
TOTAL EXPENDITURES	4,933,731	5,445,469	2,669,149	2,473,160	195,989	92.7%
EXPENDITURES (OVER)/ UNDER REVENUE	1,803,048	(617,212)	1,194,856	2,338,883	(\$1,144,027)	N/A

* Amounts include accruals and encumbrances.

Texas Department of Savings and Mortgage Lending

Budget Variance Analysis as of February 29, 2012

Revenues:

Licensing Revenues - Actual revenues collected are 22.8% over budget due to higher than anticipated volume of registration and license renewal applications submitted via the NMLSR.

Thrift Application Fees - Actual revenues collected are 65% over budget due to higher than anticipated volume of thrift applications submitted.

Fines and Penalties - Actual revenues are 730.0% over budget due to collections of penalties assessed for unlicensed activities.

Expenditures:

Classified Salaries and Employee Benefits - Budget variances are due to unfilled positions or positions filled at a later date than budgeted.

Professional Services and Fees - Actual expenditures are 30.6% over budget due to higher volume of administrative hearings for unlicensed activity and the related administrative law judge fees.

Building: Deferred Maintenance - Negative expenditures due to refund received from TFC for deferred maintenance items.

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John Keel, CPA
State Auditor

A Follow-up Audit Report on The Office of Consumer Credit Commissioner

April 6, 2012

Members of the Legislative Audit Committee:

The Office of Consumer Credit Commissioner (Office) fully implemented 10 (91 percent) of 11 recommendations that auditors selected for follow up from *An Audit Report on the Office of Consumer Credit Commissioner* (State Auditor's Office Report No. 09-003, September 2008). Specifically, of the 11 recommendations selected for follow-up audit work:

- The Office fully implemented three recommendations regarding its licensee examination process.
- The Office fully implemented two recommendations regarding its complaint resolution process, and its implementation of one recommendation regarding its complaint resolution process is incomplete/ongoing.
- The Office fully implemented four recommendations regarding its licensing of motor vehicle sales finance dealers.
- The Office fully implemented the recommendation to strengthen its information technology as the State Auditor's Office had recommended in 2007 (see *An Audit Report on Performance Measures at the Office of Consumer Credit Commissioner*, State Auditor's Office Report No. 07-039, July 2007).

While the Office has made significant progress in implementing most of the prior audit recommendations, it should continue its efforts to strengthen its complaint resolution process. Specifically, although the Office has policies and procedures to guide its complaint resolution process, it does not consistently ensure that it properly documents in its database the reason complaints are open for more than 90 days.

Background Information

In September 2008, the State Auditor's Office issued *An Audit Report on the Office of Consumer Credit Commissioner* (State Auditor's Office Report No. 09-003). Auditors selected 11 of the 12 recommendations in that report for follow up based on Office management's original responses to the recommendations, the Office's subsequent self-reported recommendation implementation status and implementation date, and the level of risk.

Implementation Status Definitions

Fully Implemented - Successful development and use of a process, system, or policy to implement a prior recommendation.

Substantially Implemented - Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation.

Incomplete/Ongoing - Ongoing development of a process, system, or policy to address a prior recommendation.

Not Implemented - Lack of a formal process, system, or policy to address a prior recommendation.

SAO Report No. 12-026

Table 1 provides additional details on the Office's implementation of prior State Auditor's Office recommendations.

Table 1

Status of Implementation of Prior Audit Recommendations				
No.	Recommendation	Implementation Status as Reported by the Office	Implementation Status as Determined by Auditors	Auditor Comments
Recommendations Regarding the Examination Process				
1	The Office should ensure that examiners in the field submit examination reports to the Office's Austin headquarters on a timely basis.	Fully Implemented	Fully Implemented	Examiners submitted 3,358 (97 percent) of 3,475 examination reports completed between September 1, 2010, and December 31, 2011, to the Office within 30 days. On average, examiners submitted those reports within 10 days.
2	The Office should continue to work toward providing a supervisory review of examinations in a timely manner while also working to reduce its backlog of examination reviews.	Fully Implemented	Fully Implemented	The Office significantly reduced its backlog of examination reviews. Auditors tested 30 examination reports with compliance ratings of 3, 4, or 5 and determined that the Office had performed and documented its reviews of those reports in a timely manner.
3	The Office should draft formal policies and procedures to guide the examination review process.	Fully Implemented	Fully Implemented	The Office developed and approved policies and procedures to guide its examination review process.
Recommendations Regarding the Complaint Process				
4	The Office should provide a way for consumers to call in a complaint after regular business hours.	Fully Implemented	Fully Implemented	The Office implemented a voicemail system to capture complaints after regular business hours.
5	The Office should ensure that all data entered into the complaint database is accurate and is reviewed for accuracy and completeness.	Fully Implemented	Fully Implemented	The Office entered all 15 complaints auditors tested into its complaints database completely and accurately; it had also reviewed those complaints.
6	The Office should ensure that complaint technicians document the reason for delay in its database for all complaints that are not closed within 90 days.	Fully Implemented	Incomplete/Ongoing	The Office implemented additional policy and procedures instructing technicians to document the reason complaints are not closed within 90 days. However, 14 (52 percent) of 27 complaints not closed within 90 days did not have a documented reason for the delay.
Recommendations Regarding the Licensing Process				
7	The Office should collect all required documentation for licensing dealers.	Fully Implemented	Fully Implemented	The Office collected all required background information for 30 licensed dealer files tested.
8	The Office should ensure all licensees receive a complete criminal history check upon applying for a license.	Fully Implemented	Fully Implemented	The Office ensured that all 30 licensed dealer files tested received a completed criminal history check.
9	The Office should ensure that it does not issue a license to any applicant or principal party unless the Office has a completed criminal history check on file.	Fully Implemented	Fully Implemented	The Office ensured that all 30 licensed dealer files tested received a completed criminal history check.
10	The Office should ensure that continuous criminal history checks are performed on applicants whose fingerprints are rejected.	Fully Implemented	Fully Implemented	The Office now uses the Fingerprint Applicant Services of Texas (FAST) system, which is available through the Department of Public Safety, to facilitate the electronic submission of fingerprint-based background checks.

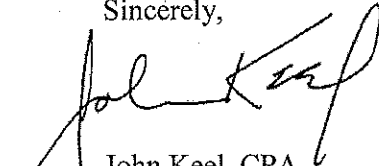
Status of Implementation of Prior Audit Recommendations				
No.	Recommendation	Implementation Status as Reported by the Office	Implementation Status as Determined by Auditors	Auditor Comments
Recommendations Regarding Information Technology				
11	The Office should implement recommendations made in the July 2007 State Auditor's Office report, where feasible.	Fully Implemented	Fully Implemented	The Office added emergency contact information for key personnel to its disaster recovery plan. In addition, its server room now has an operational smoke detector.

Recommendation

The Office should develop and implement an effective monitoring control that ensures that a documented reason exists in its complaints database for complaints not closed within 90 days.

The Office agreed with the above recommendation, and its management's response is in the attachment to this letter.

Sincerely,



John Keel, CPA
State Auditor

Attachment

cc: Members of the Finance Commission of Texas
Mr. William J. White, Chair
Ms. Susan H. Burton
Mr. Darby Byrd
Mr. Victor E. Leal
Ms. Stacy G. London
Ms. Cindy F. Lyons
Ms. Lori B. McCool
Mr. Jonathan Bennett Newton
Mr. Larry Patton
Mr. Paul Plunket
Mr. Hilliard Shands, III
Ms. Leslie L. Pettijohn, Consumer Credit Commissioner



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Attachment

Section 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine the implementation status of prior State Auditor's Office recommendations and evaluate whether management has taken corrective actions to address selected recommendations in *An Audit Report on the Office of Consumer Credit Commissioner* (State Auditor's Office Report No. 09-003, September 2008).

Scope

The scope of this audit included reviewing the Office of Consumer Credit Commissioner's (Office) implementation status of selected recommendations concerning complaints, examinations, and licensing of motor vehicle sales finance dealers in Texas from September 1, 2010, through December 31, 2011.

Methodology

The audit methodology consisted of identifying and collecting information on the implementation of selected prior audit recommendations. To determine the implementation status of selected recommendations, auditors conducted interviews; reviewed Office policies and procedures; and performed selected tests and procedures regarding complaints received and closed, examinations completed, and motor vehicle sales finance dealers licensed.

Auditors assessed the reliability of the Office's data associated with complaints, examinations, and licensing of motor vehicle sales finance dealers by (1) on-site observation of data extraction, (2) reviewing query language used to generate the data, (3) analyzing key data elements for completeness and reasonableness, (4) interviewing Office employees knowledgeable about the data, and (5) reviewing a prior State Auditor's Office report and working papers related to information technology. Auditors determined that the data was sufficiently reliable for the purposes of this audit.

Information collected and reviewed included the following:

- *An Audit Report on the Office of Consumer Credit Commissioner* (State Auditor's Office Report No. 09-003, September 2008) and supporting working papers.

- The Office's policies and procedures for complaints, examinations, and licensing of motor vehicle sales finance dealers in Texas.
- The Office's examination, complaint, and motor vehicle sales finance dealer licensing files.
- The Office's data on examinations completed, complaints received, and licensed motor vehicle sales finance dealers contained in its information systems.

Procedures and tests conducted included the following:

- Tested and analyzed examinations to determine whether examination reports were submitted and reviewed in a timely manner; this included determining the status of the Office's examination report backlog.
- Tested motor vehicle sales finance dealers' license files to determine whether the Office processed background checks correctly.
- Tested complaints to determine whether the Office documented and processed complaints in accordance with its policies and procedures.
- Followed up on information technology recommendations in *An Audit Report on Performance Measures at the Office of Consumer Credit Commissioner* (State Auditor's Office Report No. 07-039, July 2007).

Criteria used included the following:

- Title 7, Texas Administrative Code, Section 84.613.
- Title 1, Texas Administrative Code, Chapter 202.
- The Office's policies and procedures for examinations, complaints, and licensing of motor vehicle sales finance dealers.
- *Carrying Out a State Regulatory Program, A National State Auditors Association Best Practices Document*, National State Auditors Association, 2004.

Project Information

Audit fieldwork was conducted from January 2012 through February 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Jennifer R. Wiederhold, CGAP (Project Manager)
- Anton Dutchover (Assistant Project Manager)
- Thomas Andrew Mahoney
- J. Scott Killingsworth, CIA, CGAP, CGFM (Quality Control Reviewer)
- Ralph McClendon, CISSP, CCP, CISA (Audit Manager)

Management's Response

Management of the Office of Consumer Credit Commissioner provided the following response:

Management agrees with the recommendation of the SAO in this audit. Complaint procedures were previously amended to incorporate the referenced closing statement of written complaints not closed within 90 days. Consumer assistance staff has been retrained on this procedure and this specific issue. Each staff member has signed a copy of the procedure confirming their understanding and expectation of compliance. The monitoring review of this component of the procedure will be elevated from the manager of consumer assistance to the director of consumer protection.

The period of review in this follow-up audit contained over 3000 complaints of which approximately 1600 were written. Of these 1600 written complaints 27 were not closed within 90 days, less than 2% of written complaints closed. The weakness in implementation in the policy that resulted in insufficient closing statements for 14 complaints has been rectified.

Person responsible for Implementation: Director of Consumer Protection

Date for completion of implementation: March 31, 2012

Garza/Gonzalez & Associates

CERTIFIED PUBLIC ACCOUNTANTS

TEXAS DEPARTMENT OF BANKING
Austin, Texas

INTERNAL AUDIT REPORT

on

Prepaid Funeral Guaranty Funds

Fiscal Year 2012

TEXAS DEPARTMENT OF BANKING
Austin, Texas

Internal Audit Report
on
Prepaid Funeral Guaranty Funds
Fiscal Year 2012

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Finance Commission Members and
Finance/Audit Committee Members
Texas Department of Banking
Austin, Texas

We performed tests of management's assertion about the effectiveness and efficiency of the internal control structure over the Prepaid Funeral Guaranty Funds (Guaranty Funds) Area of the Texas Department of Banking (DOB) and its compliance with the Texas Finance Code, the Texas Administrative Code, and DOB's established policies and procedures, as applicable to the Guaranty Funds, for the period ending November 30, 2011. The results of our tests disclosed that such controls were adequate and no instances of noncompliance were noted. The report that accompanies this letter provides a summary of the Guaranty Funds Area and summarizes our audit scope and procedures performed to achieve the scope of our audit.

Garza/Gonzalez & Associates

February 9, 2012

TEXAS DEPARTMENT OF BANKING
Prepaid Funeral Guaranty Funds
Internal Audit Report

INTRODUCTION

The Texas Department of Banking (DOB) operates under the oversight of the Texas Finance Commission, and is an agency of the State of Texas. DOB performs functions designed to maintain a financial regulatory system for Texas that promotes a consistent banking environment, and provides the public with convenient, safe, competitive banking and other stable financial services.

DOB operates pursuant to the authority of various provisions of the Texas Finance Code, the Texas Trust Company Act, the Texas Public Information Act, Texas Government Code, Chapter 552, and the Texas Administrative Code. DOB regulates state banks, foreign bank branches, agencies, and representative offices, trust companies, prepaid funeral benefit contract sellers, perpetual care cemeteries, money service businesses, private child support enforcement agencies, and check verification entities.

The major functions of DOB are to:

- Charter, regulate, and examine all state banks, foreign bank branches, agencies, representative offices, and trust companies;
- Charter, regulate, and examine trust departments of commercial banks and trust companies;
- License, regulate, and examine sellers of prepaid funeral contracts;
- License, regulate, and examine perpetual care cemeteries;
- License, regulate, and examine money services businesses;
- Register and investigate complaints of private child support enforcement agencies; and
- Register check verification entities.

DOB was granted Self-Directed, Semi Independent (SDSI) status in the 81st Legislative Session. As an SDSI agency, DOB is not required to have their budget approved by the Legislature; however, the Finance Commission is responsible for setting the agency's spending authority or limits. DOB's entire operating funds are generated from fees assessed to the businesses it supervises and are used to fund both direct and indirect costs. General revenue funds are not used to support DOB's operations.

2012 Internal Audit Plan

We have been engaged to perform internal audits of the following areas/divisions identified in DOB's Internal Audit Plan for fiscal year 2012:

- Prepaid Funeral Guaranty Funds
- Bank Examinations
- Follow-up of Internal Audits
- Other tasks as may be assigned by the Finance Commission or the Finance/Audit Committee during the year.

This report contains the results of our audit of the Prepaid Funeral Guaranty Funds Area. The reports for the remaining areas will be issued upon completion.

INTERNAL AUDIT OBJECTIVES

In accordance with the **International Standards for the Professional Practice of Internal Auditing**, the audit scope encompassed the examination and evaluation of the adequacy and effectiveness of the audit area's system of internal control and the quality of performance in carrying out assigned responsibilities. The audit scope includes the following objectives:

- **Reliability and Integrity of Information** – Review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.
- **Compliance with Policies, Plans, Procedures, Laws, and Regulations** – Review the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations, which could have a significant impact on operations and reports, and determine whether the organization is in compliance.
- **Safeguarding of Assets** – Review the means of safeguarding assets and, as appropriate, verify the existence of such assets.
- **Economical and Efficient Use of Resources** – Appraise the economy and efficiency with which resources are employed.
- **Accomplishment of Established Objectives and Goals for Operations or Programs** – Review operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.

TEXAS DEPARTMENT OF BANKING
Prepaid Funeral Guaranty Funds
Internal Audit Report

EXECUTIVE SUMMARY

Background

The Special Audits Division (Division) of the Texas Department of Banking (DOB) is responsible for administering the Prepaid Funeral Guaranty Funds (Guaranty Funds). The Division reports to one of the two Deputy Commissioners and is under the supervision of the Division Director.

The key employees involved in the administration of the Guaranty Funds are the Commissioner, the 2 Deputy Commissioners, the Division Director and the Division's Review Examiner.

The Guaranty Funds are administered in accordance with Subchapter H of §154 of the Texas Finance Code and Chapter 25 of the Texas Administrative Code.

An individual/sole proprietor, partnership, association, or corporation may apply with DOB for a permit to sell or continue to sell *trust-funded* or *insurance-funded* prepaid funeral benefits contracts. In a *trust-funded* contract, payments to a seller are placed in a DOB-approved interest bearing restricted bank account or formal trust account; and, in an *insurance-funded* contract, payments are made to the insurance company to purchase an insurance policy or annuity. In both instances, payments by purchasers are made to pay for the future costs of the selected funeral goods and services.

Guaranty Funds

In accordance with §154.351 of the Texas Finance Code, DOB established the Guaranty Funds to guarantee performance by sellers and providers of prepaid funeral benefits contracts of their obligations to the purchasers. The Guaranty Funds are composed of 2 separate accounts, one for *trust-funded* contracts and one for *insurance-funded* contracts. The *trust-funded* account was established September 1, 1987 and the *insurance-funded* account was established September 1, 2009.

The Guaranty Funds Advisory Council (as described below) may authorize borrowing between accounts; however, no such borrowings have taken place since the accounts were established.

Guaranty Funds Advisory Council

The Guaranty Funds are supervised by the Guaranty Funds Advisory Council (Council). The Council is composed of the Commissioner (or his designee), who serves as the Chairperson; 2 representatives of the prepaid funeral industry, one of whom represents *trust-funded* contract sellers and one of whom represents *insurance-funded* contract sellers; and, one consumer representative. The prepaid funeral industry and consumer representatives are appointed by the Finance Commission, serve 2-year terms, and may not serve more than 4 terms.

Assessments and Deposits

In accordance with §154.352 and §154.3525 of the Texas Finance Code, sellers of both, *trust-funded* and *insurance-funded* contracts, are assessed \$1 for each contract sold during each calendar year. The assessments are remitted to DOB each year with its Renewal or Annual Report filing, deposited in each respective account; and, stop when the amount in the account(s) first reaches \$1 million.

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As part of the permit holder's annual examination, Division examiners verify the number of contracts sold, as reported in the Renewal or Annual Report filed with DOB, to ensure the amount remitted to the Guaranty Funds is accurate.

The amount in the *trust-funded* account reached \$1 million several years ago; therefore, sellers of such contracts are no longer assessed the fee. The most significant additions to the account are from interest income earned, which totaled \$1,411.48 for the quarter ended November 30, 2011.

Since the amount in the *insurance-funded* account has not reached \$1 million, sellers of such contracts continue to be assessed the fee. However, for the quarter ended November 30, 2011, there were no assessments collected but only interest income earned of \$5.62. In fiscal year 2011, a total of \$51,346 in assessments was collected from more than 17 *insurance-funded* contract sellers for *insurance-funded* contracts sold during the 2010 calendar year.

The accounts of the Guaranty Funds are required to be deposited with the Texas Treasury Safekeeping Trust Company (Trust Company); with a federally insured financial institution that has its main office or a branch in the state of Texas; or, in trust with a financial institution that has its main office or a branch in the state of Texas and is authored to act as a fiduciary in Texas.

The balances and composition of the Guaranty Funds as of November 30, 2011, taken from the most current quarterly investment reports, are as follows:

Trustee/Depository	Trust-Funded Guaranty Fund **		Insurance-Funded Guaranty Fund	
Texas Treasury Safekeeping Trust Company				
Repurchase Agreements	\$	690,951.86	\$	68,248.84
Certificates of Deposit (3—\$250,000 Each)		750,000.00	-	
Money Market Funds		246,507.03	-	
Total	\$	1,687,458.89	\$	68,248.84

**Deposited in this fund is \$416,775.36 that represents seized funds collected from individuals related to cease and desist and/or agreed orders and are not assessments collected for the *trust-funded* guaranty fund.

Investment Policy/Procedures

Policy Memorandum 2016 (Policy), which is the policy that governs the investment of funds placed into the Guaranty Funds, was last approved by the Council on November 18, 2009. As reflected above, amounts in the Guaranty Funds have been invested in repurchase agreements, certificates of deposit, and money market funds, which are all investments authorized by this Policy. In accordance with the Policy, a written acknowledgment is required to be received from the entities engaged in investment business with the Council, if not federally insured deposit accounts, that denotes the entity has—

- received and reviewed the investment policy for funds under the oversight of the Council; and,
- implemented reasonable procedures and controls in an effort to preclude investment transactions that are not authorized by the Council's investment policy.

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The Guaranty Fund accounts are invested in federally insured deposit accounts at various state banks and with the Trust Company. DOB, on behalf of the Council, has entered into a Funds Management Agreement with the Comptroller; which, in lieu of the written acknowledgement, denotes that Guaranty Fund account balances deposited with the Trust Company will be invested in investments authorized by the Policy.

One of the 2 Deputy Commissioners and the Division's Review Examiner are the Investment Officers for the Guaranty Funds. In accordance with the Policy, the Investment Officers prepare signed, written, quarterly investment reports for both, the *trust-funded* and *insurance-funded* accounts for presentation to the Council.

The Division's Review Examiner tracks all activity for the Guaranty Funds and upon receipt of the monthly statements from the Comptroller, prepares a monthly reconciliation for the *trust-funded* and *insurance-funded* accounts, which is used to prepare the required quarterly investment reports.

Assessments for Insufficient Account Balances

In the event that the balance of the *trust-funded* account is insufficient to pay a claim, the Council may assess each permit holder that has outstanding *trust-funded* contracts an amount based on the permit holder's proportionate share of the purchasers' deposits on all outstanding *trust-funded* contracts, determined as of the end of the preceding calendar year. For the *insurance-funded* account, the assessment is based on the permit holder's proportionate share of all outstanding *insurance-funded* contracts, determined as of the end of the preceding calendar year.

Since inception of these accounts, balances have been sufficient to pay claims; therefore, no such assessments have been imposed on permit holders.

Claims and Uses of Funds

A claim against the Guaranty Funds may be made by (1) a purchaser of a prepaid funeral benefits contract; (2) a purchaser's estate; (3) a permit holder or funeral provider who assumes or performs a contract; or, (4) a claimant for the benefit of a group of purchasers of prepaid funeral benefits contracts as part of a plan to arrange for another permit holder or funeral provider to assume the contract obligations.

Claims under \$6,500 must be reviewed and approved by the Commissioner, with review and approval by the Council at the next scheduled Council meeting. Claims over \$6,500 must be presented to the Council for approval at the next scheduled meeting. An approved claim or expense relating to a *trust-funded* contract may be paid only from the *trust-funded* account and those relating to an *insurance-funded* contract may be paid only from the *insurance-funded* account.

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The Guaranty Funds may be used to pay a loss attributable to the failure or inability of a permit holder or funeral provider to perform its obligations under a prepaid funeral benefits contract; expenses of a plan to arrange for another permit holder or funeral provider to assume the obligations of the permit holder or funeral provider; administrative expenses related to servicing and handling outstanding prepaid funeral benefits contracts that have not been assumed by another permit holder or funeral provider; expenses for administering the receivership of an insolvent permit holder or funeral provider if their assets are insufficient to pay those expenses; and, expenses to employ and compensate a consultant, an agent, legal counsel, an accountant, and any other person appropriate and consistent with the purpose of the Guaranty Funds, as determined by the Council.

It is DOB's practice to use earnings and collections from the Guaranty Fund accounts only for valid claims made and not for administrative and operating expenses.

Claims Paid

For the quarter ended November 30, 2011, the only claim paid from the *trust-funded* account was in the amount of \$4,955, to a permit holder/funeral provider as reimbursement for honoring/servicing a prepaid funeral benefits contract that had not been included in the contracts assumed from a previous permit holder. In the preceding quarter ended August 31, 2011, the most significant claim paid from the *trust-funded* account was in the amount of \$18,750.85 to a successor permit holder/funeral provider who agreed to honor 8 prepaid funeral benefits contracts from a previous permit holder. Claims have not been paid from the *insurance-funded* account since it was established in 2009.

Seized Funds and Restitution Payable

Included in the *trust-funded* account are seized funds and restitution payable in the amount of \$416,775.36 at November 30, 2011, which are collections from permit holders related to cease and desist and/or agreed orders. Although these funds are not assessments collected for the *trust-funded* guaranty fund as provided in Subchapter H of §154 of the Texas Finance Code and Chapter 25 of the Texas Administrative Code, they are deposited in the same account but accounted for separately by the Division. The funds collected remain in this account until such time that the Division conducts research and makes a determination of the proper disbursement; which, will generally be to the consumer/purchaser, a successor permit holder/funeral provider who assumes outstanding prepaid funeral benefits contracts, and/or DOB for penalties assessed for violations of the Texas Finance Code and Texas Administrative Code.

During the quarter ended November 30, 2011, the most significant addition was for seized funds in the amount of \$409,915.28 for amounts received by a permit holder/funeral provider, from the sale of prepaid funeral benefits contracts, that were not deposited in a restricted account or trust; or, submitted to a licensed insurance company, as required. The most significant disbursement was in the amount of \$24,598.14 for payments to purchasers of prepaid funeral benefits contracts that matured and were originally purchased from the previously mentioned permit holder/funeral provider.

Other significant activity occurred during the fiscal year ended August 31, 2011, as follows: (1) \$20,000 received from a permit holder as directed by an agreed order, which was subsequently paid to a successor funeral provider; and, (2) \$13,425.98 that was collected from a permit holder as directed by a final order, which was subsequently paid to 7 purchasers.

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Audit Scope

The scope of our audit was to gain an understanding of the Prepaid Funeral Guaranty Funds (Guaranty Funds) to determine whether it is administered in accordance with applicable statutes, rules, policies, and procedures.

The procedures performed to achieve the scope of our audit were as follows:

1. Reviewed and obtained an understanding of the laws and regulations provided in Subchapter H of §154 of the Texas Finance Code and Chapter 25 of the Texas Administrative Code.
2. Obtained and reviewed written policies and procedures, collected available documentation; and, conducted interviews to document formal/informal processes and controls in place for the administration of the Guaranty Funds.
3. Obtained bank statements from the financial institutions to support the establishment and existence of a *trust-funded* and *insurance-funded* account and to confirm the account balances at November 30, 2011.
4. Obtained evidence that monthly reconciliations of the Guaranty Funds accounts are prepared.
5. Obtained a listing of *insurance-funded* permit holders from which \$49,767 of the \$51,346 in assessments were received for the period from September 1, 2010 through August 31, 2011. From this listing, a 2010 Annual Report was obtained to support \$10,920 in assessments received.
6. To ensure compliance with Policy Memorandum 2016 (Policy), which governs the investment of funds placed into the Guaranty Funds, we—
 - a. Obtained the signed, written, quarterly investment reports prepared for the quarters ended November 30, 2011 and August 31, 2011.
 - b. Ensured investments of the Guaranty Fund accounts were authorized by the Policy.
 - c. Obtained the Funds Management Agreement between DOB, on behalf of the Council, and the Comptroller, which denotes that Guaranty Fund accounts with the Trust Company will be invested in investments authorized by the Policy.
 - d. Reviewed documentation to support training obtained by the 2 Investment Officers.
7. For a claim paid from the *trust-funded* account in the amount of \$4,955 during the quarter ended November 30, 2011, we obtained documentation to denote approval by the Commissioner. For another claim paid from the *trust-funded* account in the amount of \$18,750.85 during the quarter ended August 31, 2011, we obtained documentation to denote approval by the Council.

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8. For the Seized Funds and Restitution Payable funds, we performed the following procedures:
- a. Observed documentation from the 2 financial institutions, which supported the \$409,915.28 balance, in the restricted funds held by the seized permit holder/funeral provider, that was transferred into the *trust-funded* account during the quarter ended November 30, 2011.
 - b. For transactions in the amounts of \$20,000 and \$13,425.98 that occurred during the fiscal year ended August 31, 2011, we reviewed the—
 - i. Agreed and/or Final Order;
 - ii. Copy of the \$20,000 check received from the seized permit holder/funeral provider;
 - iii. Copy of the \$20,000 check made payable from the Guaranty Fund to the successor funeral provider; and,
 - iv. Copies of the 7 checks made payable from the Guaranty Fund to the 7 purchasers, which totaled \$13,425.98.

List of Audits Completed by High Level Audit Objectives

Report No.	Report Date	Name of Report	High Level Audit Objectives
1	2/9/12	Prepaid Funeral Guaranty Funds	<ul style="list-style-type: none">to determine whether the Guaranty Funds are administered in accordance with applicable statutes, rules, policies, and procedures.

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Key Audit Findings/Recommendations

Report No.	Report Date	Name of Report	Findings/Recommendations	Status (Fully Implemented, Substantially Implemented, Incomplete/ Ongoing, or Not Implemented) with brief description if not yet implemented	Fiscal Impact/Other Impact
1	2/9/12	Prepaid Funeral Guaranty Funds	None.		